

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOANNE F. SKINNER, as	:	<b>CIVIL NO. 1:07-CV-1059</b>
Administratrix of the Estates	:	
of James C. Skinner, Deceased	:	(Judge Conner)
and John Michael Taylor,	:	
Deceased,	:	
	:	(Magistrate Judge Smyser)
Plaintiff	:	
	:	
v.	:	
	:	
MICHAEL E. FORD and DAKOTA	:	
LINES, INC.,	:	
	:	
Defendants/Third-	:	
Party Plaintiffs	:	
	:	
v.	:	
	:	
YU ANMIN, DSL TRANSPORTATION,	:	
INC. a/k/a DSL TRANSPORTATION,	:	
PENNSYLVANIA TURNPIKE	:	
COMMISSION and PENNSYLVANIA	:	
STATE POLICE,	:	
	:	
Third-Party	:	
Defendants	:	

**REPORT AND RECOMMENDATION**

This is a case arising from a February 27, 2007 multiple vehicle collision on the Pennsylvania Turnpike, which was brought in this court by a complaint filed by Joanne F. Skinner, the plaintiff, on June 11, 2007. Joanne F. Skinner is the Administratrix of the Estates of James C. Skinner, Deceased and John Michael Taylor, Deceased, the husband and son of Joanne F. Skinner, who died on or about February 27, 2007. The jurisdiction of this court is based upon 28 U.S.C.

§ 1332.

The complaint names as defendants Michael E. Ford and Dakota Lines, Inc. The complaint avers that James C. Skinner, with John Michael Taylor as a passenger, was driving west on the Pennsylvania Turnpike at about 3:30 p.m. on February 27, 2007 in Franklin County. He came upon a backlog of traffic. He stopped his Ford 500 behind the stopped and stationary Mack Vision 460 tractor trailer of Reginald Kendall. Behind the Skinner vehicle, Kurt Grigg in his Chevrolet Trailblazer was slowing down to safely stop behind the Skinner vehicle and behind the Grigg vehicle the tractor trailer being driven by Yu Anmin, a 2002 Volvo tractor trailer owned by DSL Transportation, a California company, was also slowing down to stop. Then, the complaint alleges, defendant Ford, driving a 2005 tractor trailer owned by defendant Dakota, crashed at a high rate of speed in to the rear end of the Anmin tractor trailer. The Anmin tractor trailer crashed into the rear end of the Grigg Trailblazer, which in turn crashed into the rear end of the Skinner vehicle. The Skinner vehicle was propelled by the crash into and partially under the Kendall trailer, resulting in the deaths of James C. Skinner and John Michael Taylor. The complaint alleges that there had been posted warnings that there was traffic congestion and stopped traffic ahead, as well as Pennsylvania State Police patrol vehicles parked along the highway berm. The complaint sets forth a

number of theories of liability on the part of the defendants. We do not set forth more detail in this Report as to the averments contained in the complaint here, in that this Report and Recommendation addresses issues arising from the third party complaint and, specifically, the amended third party complaint.

A third party complaint (Doc. 8) was filed by the defendants on September 6, 2007 against third party defendants Yu Anmin, DSL Transportation, Inc., the Pennsylvania Turnpike Commission and the Pennsylvania State Police. An amended third party complaint (Doc. 24) was filed on October 26, 2007 against these third party defendants.

The Pennsylvania State Police filed an answer (Doc. 32) to the amended third party complaint on November 7, 2007. The Pennsylvania State Police filed a motion for judgment on the pleadings (Doc. 31) on December 13, 2007 with a supporting brief (Doc. 32). An opposing brief (Doc. 47) was filed on January 14, 2008. A reply brief (Doc. 48) was filed on January 17, 2008. This motion is a subject of this Report and Recommendation.

The Pennsylvania Turnpike Commission filed a motion to dismiss the amended third party complaint (Doc. 33) on November 17, 2007. A supporting brief (Doc. 35) was filed on

November 21, 2007. A brief in opposition (Doc. 38) was filed on December 6, 2007, and a reply brief (Doc. 43) was filed on December 19, 2007. This motion is the other subject of this Report and Recommendation.

The Pennsylvania State Police Department contends that it is entitled to a judgment on the pleadings on the basis of the Eleventh Amendment and, secondarily, on the basis of the state's sovereign immunity. The Pennsylvania Turnpike Commission contends that it is entitled to have the amended third party complaint dismissed on the basis of the state's sovereign immunity. We will recommend for the reasons stated in this Report that the motion of the Pennsylvania State Police for a judgment on the pleadings be granted on the basis of Eleventh Amendment immunity, that the court not reach the issue of sovereign immunity as to the State Police, and that the motion of the Turnpike based upon sovereign immunity be denied.

We first address the motion of the Pennsylvania State Police for judgement on the pleadings. Federal Rule of Civil Procedure 12(c) allows a party to move for judgment on the pleadings "[a]fter the pleadings are closed but within such time as not to delay the trial." In deciding a motion for judgment on the pleadings the court must "view the facts presented in the pleadings and the inferences to be drawn

therefrom in the light most favorable to the . . . nonmoving party." *Green v. Fund Asset Management*, 245 F.3d 214, 220 (3d Cir. 2001) (quoting *Institute for Scientific Info., Inc. v. Gordon & Breach, Science Publishers, Inc.*, 931 F.2d 1002, 1004 (3d cir. 1991)). Judgment on the pleadings is only appropriate if the plaintiffs would not be entitled to relief under any set of facts that could be proved. *Id.*

The Eleventh Amendment provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Although its text appears to restrict only the Article III diversity jurisdiction of the federal courts, the Eleventh Amendment has been interpreted "to stand not so much for what it says, but for the presupposition . . . which it confirms." *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996) (quoting *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 779 (1991)). That presupposition is that each state is a sovereign entity in our federal system and that it is inherent in the nature of sovereignty that a sovereign is not amenable to suit unless it consents. *Id.* Thus, "the Constitution does not provide for federal jurisdiction over suits against nonconsenting States." *Kimel v. Florida Bd. of*

*Regents*, 528 U.S. 62, 73 (2000).

In the absence of consent, a suit in federal court against the state or one of its agencies is barred by the Eleventh Amendment. *Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (per curiam). However, a state may waive its Eleventh Amendment immunity by consenting to suit and Congress may abrogate States' Eleventh Amendment immunity when it unequivocally intends to do so and it acts pursuant to a valid grant of constitutional authority. *College Savings Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999).

The Pennsylvania State Police Department is an agency of the Commonwealth of Pennsylvania. See 71 P.S. § 250, *et seq.* The Commonwealth of Pennsylvania has not waived its Eleventh Amendment immunity, see 42 P.C.S.A. § 8521(b). Accordingly, the plaintiff's claims against the Pennsylvania State Police are barred from federal court by the Eleventh Amendment.

The motion of defendant Pennsylvania State Police for judgment on the pleadings is based in part upon 42 Pa. C.S.A. § 8521(b), which specifically states that the Commonwealth has not waived the Eleventh Amendment immunity of the Commonwealth from suit in federal courts. The third party plaintiffs

assert that the Commonwealth's Eleventh Amendment immunity is not applicable in this case because the Pennsylvania State Police is present as a third party defendant, under the court's supplemental jurisdiction. 28 U.S.C. § 1367. This distinction does not make a difference. 28 U.S.C. § 1367 does not override 42 Pa. C.S.A. § 8521(b). See *Raygor v. Regents Univ. of Minn.*, 534 U.S. 533, 542 (2002) (holding that § 1367(a)'s grant of jurisdiction does not extend to claims against nonconsenting state defendants). The Pennsylvania State Police is entitled to have a judgment in the form of a dismissal without prejudice<sup>1</sup> entered in its favor based upon Eleventh Amendment immunity and the absence of an immunity waiver as to a case in federal court.

Next, we will address the Pennsylvania Turnpike Commission's motion to dismiss based upon sovereign immunity.

A motion to dismiss pursuant to Rule 12(b)(6) challenges the legal sufficiency of the plaintiff's complaint; the court must decide whether, even if the plaintiff were able to prove all of his allegations, he would be unable to prevail. *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977). In connection with a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, the burden is on the moving party to

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<sup>1</sup> A state court civil action would not be barred by the Eleventh Amendment.

show that there is no actionable claim. *Johnsrud v. Carter*, 620 F.2d 29, 33 (3d Cir. 1980). When deciding a motion to dismiss, the court must accept all material allegations of the complaint as true and draw all inferences in the light most favorable to the plaintiffs. *Pennsylvania House, Inc. v. Barrett*, 760 F. Supp. 439, 449 (M.D. Pa. 1991). However, "conclusory allegations of law, unsupported conclusions and unwarranted inferences need not be accepted as true." *Id.* at 449-50.

The defendant Pennsylvania Turnpike Commission takes the position that the amended third party complaint fails to state a claim against it upon which relief can be granted because the Commonwealth of Pennsylvania has not waived its sovereign immunity as to a claim such as is presented in the amended third party complaint against this state Commission. The 42 Pa. C.S.A. § 8522 waiver of sovereign immunity by the Commonwealth of Pennsylvania provides that the defense of sovereign immunity of a Commonwealth of Pennsylvania party shall not be raised to negligence claims for damages caused by, in material part:

**(1) Vehicle liability.**--The operation of any motor vehicle in the possession or control of a Commonwealth party. . .

. . . .

**(4) Commonwealth real estate, highways and sidewalks.**--A dangerous condition of



Commonwealth agency real estate . . . ,  
including . . . highways under the  
jurisdiction of a Commonwealth agency . . .

The Turnpike Commission asserts that the claim against it in the amended third party complaint is not a claim of vehicle liability within the meaning of the waiver statute or a claim of a dangerous highway condition within the meaning of the statute and is accordingly not a claim to which Pennsylvania has waived its sovereign immunity.

The Turnpike Commission asserts that the third party plaintiffs' claims do not have to do with the condition of the highway or highway property, but "instead allege merely that the Pennsylvania Turnpike Commission could have followed standards or procedures to avoid or minimize injuries during the cleanup of a previous accident." This is not a claim, the Commission asserts, of a dangerous condition of the Turnpike itself.

The amended third party complaint (Doc. 24) alleges negligent and careless conduct on the part of the Turnpike Commission consisting of

- a. Failure to properly design its . . . highways;
- b. Failure to place proper traffic control devices on its highway;
- c. Failure to follow appropriate traffic control measures;

- d. Failure to follow establish (sic) standards to warn westbound travelers of potential traffic hazards;
- e. Failure to follow and comply with work zone traffic control guidelines;
- f. Failure to comply with and follow standards and procedures as set forth in the Manual on Uniform Traffic Control Devices;
- g. Failure to institute and follow an appropriate temporary traffic control plan;
- h. Failure to properly instruct the Pennsylvania State Police;
- i. Creating a dangerous condition of Commonwealth highways;
- j. Operating Commonwealth vehicles and equipment in a manner that caused plaintiffs to suffer injuries and damages.

(Doc. 24, ¶ 38).<sup>2</sup>

Apart from these allegations in ¶ 38, the amended third party complaint does not allege facts concerning the actions or inactions allegedly taken or not taken by the Turnpike Commission.

The amended third party complaint does contain in ¶ 38 the above quoted conclusory claims that the Turnpike Commission created a dangerous highway condition and that it operated vehicles in a manner causing injuries to the plaintiffs. But the amended third party complaint does not plead facts in further demonstration of how in the events

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<sup>2</sup> ¶ 38, i and j were added in the amended third party complaint.

leading up to and occurring during this accident it was a condition of the highway or was the role of a Turnpike vehicle that caused or contributed to the accident.

In opposing the motion to dismiss the amended third party complaint, the third party plaintiffs cite cases where there was some highway condition (i.e., some condition of the real property constituting the highway) or some vehicular involvement that arguably had contributed to the accident and injuries. *Bendas v. Township of White Deer*, 611 A.2d 1184 (1992); *Snyder v. Harmon*, 522 Pa. 424; 562 A.2d 307 (1989; *Young v. Commonwealth*, 714 A.2d 475 (Pa. Commw. 1998). In the cited cases, motions for summary judgment were denied.

Here, as described in the third party plaintiffs' brief, their theory of a dangerous highway condition is that there was a failure to clean up after a prior accident and also that the closing of both westbound lanes of the limited access highway was negligent and contributed to the accident. The plaintiffs' theory of vehicle liability is that Turnpike Commission vehicles were being used to clear the highway from the debris caused by an earlier accident.

Although the evidentiary basis for claims against the Turnpike Commission based upon "vehicle liability" or "Commonwealth real estate, highways and sidewalks" is not

presented in a manner that would withstand a summary judgment motion, the present Rule 12(b)(6) motion imposes the less demanding burden upon the third party plaintiffs to state a claim upon which relief can be granted. Rule 8(a)(2) of the Federal Rules of Civil Procedure requires a short and plain statement of the claim showing that the pleader is entitled to relief. The amended third party complaint does not fail to state a claim against the Turnpike Commission upon which relief can be granted. That is not to say that this is a case in which there is a waiver of sovereign immunity; rather, it is to say that the conclusion that it is a case in which there is or is not a waiver can not be made in the context of this 12(b)(6) motion.

Both sides to this motion refer to the Pennsylvania State Police accident report ("Police Crash Reporting Form," Doc. 38, Exh. A), and both sides argue factual inferences that they believe should be drawn from the report. The resolution of factual issues in the context of this motion to dismiss would be a misapplication of Rule 12(b)(6), even in consideration of Rule 12(d). A motion for summary judgment here addressing the sovereign immunity exceptions issue is likely to involve more evidence than the Police Crash Reporting Form.

It is recommended, for the foregoing reasons, that the motion of third party defendant Pennsylvania State Police for judgment on the pleadings in the nature of a motion to dismiss the amended third party complaint as to that third party defendant be granted, that the amended third party complaint be dismissed as to third party defendant Pennsylvania State Police, and that the motion of third party defendant Pennsylvania Turnpike Commission to dismiss the amended third party complaint as to that third party defendant be denied. It is further recommended that the case be remanded to the undersigned for further proceedings.

/s/ J. Andrew Smyser  
J. Andrew Smyser  
Magistrate Judge

Dated: January 29, 2008.